

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the Office Action dated October 21, 2003. After entry of this amendment, claims 2-5, 7-19, 21-25, and 27-29 will be pending in the Application. Claims 6, 20, and 26 have been canceled. Claims 7,8,11,12, 15-17, and 21-25 have been amended. New claims 27-29 have been added. Reconsideration and allowance is respectfully requested in view of the remarks made below.

Applicant would like to thank Examiner James Smalley and Primary Examiner Robin Hylton for granting an interview on March 24, 2004. Applicant has incorporated Examiner's suggestions when possible

#### **2. The § 112 Second Paragraph Rejections**

Claims 11-12, 16-17, and 24-25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It was determined during the interview that adding the word "dimensionally" after the word "circumferentially" in claims 11-12, 16-17, and 24-25, would overcome the rejection based upon § 112, second paragraph. Applicant has amended the claims to include the word "dimensionally." Applicant respectfully submits that this amendment overcomes the § 112, second paragraph rejection, and requests notification to that effect.

Applicant has further amended claims 16-17 to overcome an objection made to those claims. Claims 16 and 17 have been amended so that "compressed" is now "compress." Applicant believes that this amendment overcomes the objection.

#### **3. The Rejections Under 35 U.S.C. § 102 (b) and 35 U.S.C. § 103(a)**

Claims 2-5, 9-10, 15 and 21-23 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 6,116,442 (hereinafter "Higgins"). Applicant submits that amended independent claims 15, 21, and 23 are not anticipated by Higgins.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently describe, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Newly amended claims 15, 21, and 23 require that "one of said flexible web elements has a ventilation opening." As agreed upon in the Interview, Higgins does not have a ventilation opening. Webs 21, as seen in Figs. 1 and 4 in Higgins, do not have ventilation holes. Therefore, Higgins does not meet the limitation wherein "one of said flexible web elements has a ventilation opening," and does not anticipate claims 15, 21, and 23.

Applicant respectfully requests that the rejection of claims 15, 21, and 23 based upon Higgins be removed. Furthermore, Applicant believes the rejection of claims 2-5, 9-10, and 22 based upon Higgins should be removed due to their dependence from allowable base claims. Additionally, claims 11-14, 16-19 and 24-25, rejected under 35 U.S.C. § 103(a) should be allowed by virtue of their dependence from allowable base claims.

Claims 2-3, 6-10, 15, 20-23, and 26 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 4,657,153 (hereinafter "Hayes"). Applicant submits that Hayes does not anticipate amended independent claims 15, 21, and 23.

Independent claims 15, 21, and 23 require that the J-hook retention member extend continuously about a circumference of the tamper-evident band. As agreed upon in the Interview, Hayes does not have a retention member that extends continuously about a circumference of the tamper-evident band. Hayes has three tabs 10 that extend along 100° of the perimeter of the tamper indicating band 3. See col. 2, lines 60-61, and Fig. 7A. In order to be continuous around the perimeter, tabs 10 would have to each extend 120°. Therefore, Hayes does not meet the limitations of having a J-hook retention member that extends continuously about a circumference of the tamper-evident band.

Applicant respectfully requests that the rejection of claims 15, 21, and 23 based upon Hayes be removed. Furthermore, Applicant believes the rejection of claims 2-3, 6-10, 20, 22, and 26 based upon Hayes should be removed due to their dependence from allowable base claims.

**4. New Claims**

New claims 27-29 were added to further define the scope of Applicant's invention. Support for claim 27 can be found on page 6, line 16 of Applicant's specification, and in Fig. 2. Support for claims 28 and 29 can be found on page 6, lines 2-7 and in Fig. 2.

**5. Conclusion**

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

Date: 11/14/04

John L. Knoble  
Registration No. 32,387

KNOBLE YOSHIDA & DUNLEAVY, LLC  
(Customer No. 21,302)  
Eight Penn Center, Suite 1350  
1628 John F. Kennedy Blvd.  
Philadelphia, PA 19103  
Tel: (215) 599-0600  
Fax: (215) 599-0601